

Paul Lopez
Emily M. Hahn
Abernathy, Roeder, Boyd & Hullett, P.C.
1700 Redbud Blvd, Suite 300
McKinney, Texas 75069
Telephone: (214) 544-4000
Telecopier: (214) 544-4040

ATTORNEYS FOR COLLIN COUNTY TAX ASSESSOR/COLLECTOR

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re	§	Chapter 11
	§	
SEARS HOLDINGS CORPORATION, <i>et al.</i>,	§	Case No. 18-23538 (RDD)
	§	
Debtors.	§	(Jointly Administered)

**THE COLLIN COUNTY TAX ASSESSOR/COLLECTOR'S
RESPONSE TO DEBTORS' FORTY-FOURTH OMNIBUS
OBJECTION TO PROOFS OF CLAIM**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

NOW COMES The Collin County Tax Assessor/Collector (hereinafter "Collin County") and files its Response (the "Response") to Debtors' Forty-Fourth Omnibus Objection to Proofs of Claim (the "Objection") [Docket No. 10242] filed on January 19, 2022 and respectfully shows the court as follows:

SUMMARY OF RESPONSE

Pursuant to Texas Property Tax Code §§ 32.01 and 32.05, Collin County has a perfected lien on all of Debtor's business personal property. Debtor erroneously asserts that Collin County's amended claim is duplicative and should be disallowed in its entirety. Collin County objects to this treatment as Collin County has not been paid in full.

RELEVANT BACKGROUND

1. Collin County Tax Assessor/Collector is a political subdivision of the State of Texas and, as such, is authorized to levy and assess *ad valorem* taxes on the value of property located within its taxing jurisdiction as of January 1 of each year.¹

¹ TEX. PROP. TAX CODE § 32.01.

2. On February 28, 2019, Collin County timely filed its secured proofs of claim, including claim no. 8936 for ad valorem property taxes assessed against the Debtors' property for tax year 2018 and estimated tax year 2019 (the "Original Claim").

3. On October 5, 2020, Collin County filed proof of claim no. 26339 amending the Original Claim reflecting the still-outstanding balance for tax year 2018 (the "Amended Claim").

4. As of the date of filing, the Debtor has still failed to pay the taxes outstanding as reflected in the Amended Claim.

5. On January 19, 2022, Debtor filed its forty-fourth (44th) omnibus objection stating that Collin County's Amended Claim is duplicative.

6. Collin County's Amended Claim for the still outstanding 2018 ad valorem property taxes is not duplicative.

RESPONSE

7. Pursuant to the Texas Property Tax Code §§ 32.01 and 32.05, Collin County has a first priority secured lien against the business personal property of Debtor. "Texas imposes a property tax, which is secured by a "tax lien" that automatically attached to taxable property each year "in favor of each taxing unit having power to tax the property." *Billings v. Propel Fin. Servs., L.L.C.*, 821 F.3d 608, 610 (5th Cir. 2016). Specifically, § 32.01 of the Texas Property Tax Code provides:

(a) On January 1 of each year, a tax lien attaches to property to secure the payment of all taxes, penalties and interest ultimately imposed for the year...

(b) A tax lien on inventory, furniture, equipment, or other personal property is a lien in solido and attaches to all inventory, furniture, equipment, and other personal property that the property owner owns on January 1 of the year the lien attaches or that the property owner subsequently acquires.

...

(d) The lien under this section is perfected on attachment and, except as provided by Section 32.03(b), perfection requires no further action by the taxing unit.

8. Moreover, § 32.05 of the Texas Property Tax Code provides that such tax lien takes priority and prevails, regardless of whether the debt, lien, future interest, or other encumbrance existed before attachment of the tax lien. TEX. PROP. TAX CODE § 32.05(a)-(b). Therefore, pursuant to the Texas Property Tax Code and relevant case law, the tax lien arises on January 1 of each tax year and “floats” to after acquired property. *See City of Dallas v. Cornerstone Bank*, 879 S.W.2d 264, 271 (Tex. App. – Dallas 1994, no writ). The tax lien is a lien *in solido* and is a lien of all personal property of the Debtor. *In re Universal Seismic*, 288 F.3d 205, 208 (5th Cir. 2002). The tax lien is also unavoidable. *In re: Winns Stores*, 177 B.R. 253, 258 (Bankr. W.D. Tex. 1995).

9. On October 5, 2020, Collin County filed the Amended Claim to reflect, among other things, the 2018 ad valorem property taxes are still due and owing. Collin County objects to the disallowance of the Amended Claim to the extent it seeks to expunge any and all amounts *still* due and owing on such underlying accounts that have not been paid in full. As previously established, these taxes are secured by first priority liens pursuant to Texas Property Code §§ 32.01 and 32.05.

WHEREFORE, PREMISES CONSIDERED, Collin County prays that this Court deny Debtors’ Objection and grant it any and all relief to which it is justly entitled.

Respectfully submitted,

**ABERNATHY, ROEDER, BOYD
&HULLETT, P.C.**

/s/ Paul Lopez

Paul M. Lopez

Texas State Bar No. 24076516

Emily M. Hahn

Texas State Bar No. 24101846

1700 Redbud Blvd., Suite 300

McKinney, TX 75069

Telephone: 214-544-4000

Direct: 214-544-4088

plopez@abernathy-law.com

ehahn@abernathy-law.com

**ATTORNEYS FOR COLLIN COUNTY
TAX ASSESSOR/COLLECTOR**

CERTIFICATE OF SERVICE

There undersigned counsel hereby certifies that a true and correct copy of the above Response to Forty Fourth Omnibus Objection has been served via U.S. Mail to those parties listed below and via the Court's Notice of Electronic Filing on February 9, 2022 by Electronic Notification.

/s/ Paul M. Lopez
Paul M. Lopez

Debtor

Sears Holding Corporation
3333 Beverly Road
Hoffman Estates, IL 60179

Debtor's Attorney

Jacqueline Marcus
Weil Gotshal & Manges, LLP
767 5th Avenue
New York, NY 10153

U.S. Trustee United States Trustee

Office of the United States Trustee
U.S. Federal Office Building
201 Varick Street, Room 1006
New York, NY 10014